FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION

WTI/162944

PRELIMINARY RECITALS

Pursuant to a petition filed December 30, 2014, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a hearing was held on February 17, 2015, at Baraboo, Wisconsin.

The issue for determination is whether this appeal is timely.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

[redacted]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703
By: [redacted]
Wisconsin Works (W-2)

, WI

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES #[redacted]) is a resident of Sauk County.
2. By a three separate notices dated 6/5/14, petitioner's W-2 agency informed her that she was overpaid a total of $1,565 in W-2 payments between November 2013 and January 2014.

Petitioner received the notice. Petitioner did not seek the fact-finding review as provided in those notices.

3. Petitioner did not pay the money back.

4. Petitioner was sent a tax intercept notice on 11/14/14 which provided for a 30-day deadline for the filing of a request for hearing.

5. There is no record that petitioner responded to any of the notices. She did not file an appeal with the Division of Hearings and Appeals until she filed this appeal on December 30, 2014.

DISCUSSION

Wis. Stat., §49.85(2)(b), provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from W-2 and child care assistance overpayments.

The Department of Children and Families must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3)(b).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

> If a person has requested a hearing under this subsection, the department … shall hold a contested case hearing under s. 227.44, except that the department … may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The Department is required to recover all overpayments of public assistance benefits. Requests for fact finding reviews of actions to recover W-2 benefits must be filed within 45 days of the action. Wis. Admin. Code, §DCF 101.22(1). Appeals of tax intercept notices must be filed within 30 days of the notice. Wis. Stat. §49.85(3)(a)2.

Petitioner seeks to have the original overpayment reversed in this appeal. She testified that she does not believe she received the W-2 payments at issue. The problem is that her appeal is untimely. She did not request a fact finding review of the original overpayment notice, and she did not appeal the tax intercept notice within 30 days. It is too late now to address the merits of the original overpayment claim. And the appeal of the tax intercept is also untimely.

CONCLUSIONS OF LAW

Petitioner's appeal of the PACU's tax intercept was untimely.

THEREFORE, it is **ORDERED**

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of April, 2015

_____

\sJohn P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 16, 2015.

Wisconsin Works (W-2)
Public Assistance Collection Unit